

REMARKS

Claims 12, 14-19 and 39-40 are pending in the instant application. Claims 12, 14-17 and 19 have been amended to remove the term “immunostimulatory moiety” and simply recite what each element is. Claims 15-19 have been withdrawn from consideration, but are sought to be rejoined. Each basis for rejection is separately addressed below.

Rejoinder

Applicants respectfully request that Claims 15-19, previously withdrawn as being directed to non-elected species, be rejoined herein. Claims 15-19 depend from and, thus, require all the limitations of Claim 12.

Anticipation Under 35 U.S.C. §102: Cook

Claims 12 is rejected as being anticipated by Cook. Claim 12 has been amended to remove the term “immunostimulatory moiety” and simply recite what is present at each position in the compound. Cook does not teach the recited elements at their respective positions. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Anticipation Under 35 U.S.C. §102: Weiner

Claims 14 is rejected as being anticipated by Weiner. Claim 14 has been amended to remove the term “immunostimulatory moiety” and simply recite what is present at each position in the compound. Weiner does not teach all of the recited elements. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Obviousness under 35 U.S.C. §103: Cook/Stein and Cheng

Claims 12 and 39 are rejected as being obvious over Cook and Stein and Cheng. As noted above, Cook does not teach the recited elements at their respective positions. Stein does nothing to remedy this deficiency. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Obviousness under 35 U.S.C. §103: Weiner/Cook/Stein and Cheng

Claims 14 and 40 are rejected as being obvious over Weiner, Cook and Stein and Cheng. As noted above, Cook does not teach the recited elements at their respective positions. Stein does nothing to remedy this deficiency. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Obviousness-type double patenting

Claims 12, 14, 39 and 40 are provisionally rejected for obviousness-type double patenting over various claims of co-pending applications 10/865,245 and 10/694,418. Because these applications are, respectively, later filed or of even filing date with the present application and have not been allowed, once all other presently maintained rejections are overcome, this application should be passed to allowance and any terminal disclaimers or other appropriate actions should be made in the cited applications. See MPEP 804.B.1.

Claims 12 and 14 are also rejected for obviousness-type double patenting over U.S. Patent No. 7,262,286. Claim 1 of this patent recites:

An isolated immunostimulatory oligonucleotide compound, comprising an immunostimulatory dinucleotide of formula C*^pG, wherein the immunostimulatory oligonucleotide compound is at least 6 nucleotides in length, and wherein C* is a cytidine analog selected from the group consisting of 5-hydroxycytosine, 5-hydroxymethylcytosine, N4-alkylcytosine and 4-thiouracil, G is guanosine, 2'-deoxyguanosine, or a guanosine analog, and p is an internucleotide linkage selected from the group consisting of phosphorothioate, and phosphorodithioate.

Claim 1 of this patent thus does not teach or suggest the positional modifications of claims 12 or 14. For purposes of obviousness-type double patenting, it is only what the claim of the recited reference teaches or suggests that is relevant, not what the specification teaches or suggests. Claims 1-4 of the cited patent do not include 1,2-dideoxyribose (where the base of the nucleoside is replaced by hydrogen) at all. Moreover, phosphorothioate is not one of the specific immunostimulatory moieties recited at any of the respective recited positions of claim 12 or 14.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner believes that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned attorney at 207-791-3078.

Respectfully submitted,

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By: /Wayne A. Keown/

Preti Flaherty
One City Center
Portland, ME 04112
Telephone: 207-791-3000
Facsimile: 207-791-3111

Wayne A. Keown
Registration No. 33,923